

**Debt Recovery Policy  
August 2019**

## 1.0 Introduction

- 1.1 Homes For Life Housing Partnership is committed to achieving best practice in arrears management, this being integral to the Board's objective of maximising available resources within the Company.
- 1.2 This document therefore outlines the Company's Arrears Policy, one of the key documents we produce. In line with good practice, the underlying principles are to (i) help tenants and owners avoid getting into arrears and (ii) ensure that these are dealt with in a fair but effective manner when they do.
- 1.3 The Company's main source of income is rents and it is therefore critical that losses in this area are kept to an absolute minimum. Ultimately, high rent arrears could prevent the Company from having sufficient funds to maintain and manage the housing stock in the long term.
- 1.4 As well as outlining the Company's approach in controlling and managing arrears due to non-payment of rent by the tenant, the policy also outlines what the Company will do to minimise debts due to none payment of factoring dues

## 1.5 Formulation of Policy

- 1.5.1 This policy reflects the guidance on good practice given to social landlords in the collection of arrears. It recognises that it is in the interests of both landlords, tenants and owners to ensure that rent or factoring fees are paid promptly and to ensure that difficulties are resolved wherever possible without court proceedings. ,

There are National Outcomes, Business Plan objectives and Scottish Social Housing Charter Outcomes that this policy should comply with..

One of the key priorities in our Business Plan is to be:

- “• *Approachable, reliable, maintaining affordable rents and desirable homes*

### **The Scottish Social Housing Charter**

The Charter sets the standards and outcomes that all social landlords should aim to achieve when performing their housing activities. Our services and any action taken against tenants in rent arrears or owners in factoring arrears must have regard to the following Charter outcomes:

- **Outcome 1:** every tenant and other customer has their individual needs recognised, is treated fairly and with respect, and receives fair access to housing and housing services.
- **Outcome 9:** People at risk of losing their home get advice on preventing homelessness
- **Outcome 11:** Tenants get the information they need on how to obtain support to remain in their home; and ensure suitable support is available, including services provided directly by the landlord and by other organisations
- **Outcome 13:** Tenants, owners and other customers receive services that provide continually improving value for the rent and other charges they pay.

## **Legal and Regulatory Framework**

The Company will ensure that this policy complies with the law and with regulatory and good practice requirements in minimising rent arrears and evictions. This includes the following:

Debtors (Scotland) Act 1987  
Data Protection Act 1998  
Human Rights Act 1998  
The Children (Scotland) Act 1995  
Housing (Scotland) Act 2001  
Debt Arrangement and Attachment (Scotland) Act 2002  
Homelessness etc. (Scotland) Act 2003  
The Bankruptcy and Diligence etc (Scotland) Act 2007  
Housing (Scotland) Act 2010 (Pre-action Requirements)  
Equalities Act 2010  
Housing (Scotland) Act 2014  
The General Data Protection Regulation (GDPR) 2016

### **1.6 Consultation**

1.6.1 As outlined in the tenant participation policy, the Company welcomes the statutory provisions in the Housing (Scotland) Act 2001 which require all social landlords to take tenants' views into account when reviewing key service delivery policies where there may be a significant effect on tenants.

1.6.2

#### **Fairness and Equality**

We will ensure that tenants receive fair and equal treatment regardless of disability, marital status, gender, age, race, ethnic or national origin, religious belief or sexual orientation.

We will issue standard escalation letters which are jargon-free and written in plain English

We will make information available in other languages and other formats eg large print or Braille if requested

We will provide interpreting services for interviews when required

## **2.0 POLICY OBJECTIVES**

### **Rent Arrears Prevention**

2.1 The first objective of this policy is to be effective at preventing rent arrears - prevention should be viewed as the key to the success of the policy. Prevention starts at the conditional offer of tenancy stage. We ask matched applicants to consider whether or not they can afford to take on, furnish and maintain a tenancy. We direct them to financial advice to be sure they have considered this before they take up the offer of tenancy. .

2.2 When a new tenant is being taken through their tenancy agreement at the sign-up stage, the Housing Officer will make the tenant aware of the various methods of paying rent. The procedure for making payments by their preferred method will be explained and, we will promote Direct Debit as the most convenient way to pay for tenants who do not receive full Housing Benefit or full Universal Credit managed payments to pay their

rent. Direct Debits can be set up in a variety of ways to suit the tenant's income and minimise difficulties with budgeting. For example monthly, weekly, 4 weekly or fortnightly.

- 2.3 Also part of the sign-up procedure is a check on the tenant's entitlement to Universal Credit or Housing Benefit. Where the tenant does (or may) qualify for Universal Credit or Housing Benefit, the Company will assist the tenant to apply if necessary.
- 2.4 We will identify people who may be at a higher risk of falling into arrears at an early stage, for example young people taking up their first tenancy, people who have experienced homelessness, people with mental health issues, people with learning difficulties and people with a prior history of rent arrears. We will allocate more time to supporting tenants with these known risk factors.
- 2.4 Finally, the arrears procedure will be explained and the tenant will be provided with a summary leaflet. In particular, the tenant will be advised to contact their Housing Officer as soon as they become aware of any problems whatsoever in making the rent payments.

### **Early Action**

Rent accounts will be monitored regularly and closely by the Housing Officer.

- 2.5 Once a rent payment has been missed, it is critical that the tenant is contacted as early as possible so that the problem can be addressed whilst the arrear is still relatively small. Early contact means that the Housing Officer should make contact with the tenant in arrears within five working days of the payment being late. The method of contact should be by letter, with the Housing Officer supplementing this by a visit or telephone call if this is considered appropriate. Under no circumstances should a new arrear be allowed to exist for an entire debit period without good effort being made to contact the tenant.
- 2.6 A record of all contact should be kept on the SDM "diary" facility for the purposes of showing an audit trail, with copies of all correspondence being attached to the SDM diary. This is extremely important should the Company ultimately take legal action as poor record-keeping could compromise the Company's position in Court.
- 2.7 There are a number of reasons why a new arrear may appear on a rent account. For example, there may be a change in the tenant's circumstances, waiting times for Universal Credit payments to be processed, the tenant may be experiencing difficulties in making the rent payments, or the payment may have been made but, for some reason, not credited to the account. Whatever the reason, it is clear that early action helps.
- 2.8 If, once the tenant has been contacted, it becomes clear that the arrear is not going to be cleared immediately, the Housing Officer will make an arrangement for repayment – see sections 2.9 to 2.11, below.

### **Making a Fair and Effective Repayment Arrangement**

- 2.9 The Company recovers arrears "fairly and effectively". This means that:

- The repayment amount will be informed by the amount that the tenant can afford
- Missed payments will be acted upon quickly (within five days of a payment due failing to show up on the rent account)

- The minimum arrangement acceptable is where the arrear will reduce by at least the equivalent of the DWP Arrears Direct amount
- 2.10 A pro forma will be completed for all cases where the arrear will not be cleared prior to the next debit period (a copy of this can be found on pages 1 to 3 of the Arrears Visit Pack at Appendix 1). When making an arrangement, the Housing Officer will observe the following:
- be sensitive and non-threatening whilst communicating the seriousness of the situation
  - be mindful that some situations can be exacerbated by a home visit, for example domestic abuse. consider whether the tenant has any particular needs or requirements such as an interpreter or someone to advocate on their behalf and act accordingly, being aware of confidentiality and Data Protection issues – a mandate should always be signed, if possible
  - be sensitive to cultural and gender issues
  - arrange follow-up visits to discuss the situation where the arrears are likely to take more than 6 months to be cleared
  - establish whether there are any qualifying occupiers over the age of 16 (or currently 15) in the household for reference in any future legal action
  - from the income and expenditure pro forma, assess whether the tenant could benefit from the services of a welfare benefits advisor/debt counselling service, and offer to make arrangements/an appointment as necessary
- 2.11 As noted in section 2.9, the amount to be paid towards the arrear should be based on the ability of the tenant to afford the payments. There is therefore no minimum or maximum amount except that the equivalent to the DWP Arrears Direct weekly deduction should be paid unless exceptional circumstances prevail – the Company will encourage tenants eligible for Arrears Direct or Universal Credit Managed Rent Arrears Payments to agree this method of arrangement.
- 2.12 On the same or next day after an arrangement has been made, letter ARR9 (in an alternative format, if required) should be sent out. This should detail:
- the total amount payable broken down into the net charge and the amount going to the arrear
  - the frequency of the payments
  - the method of payment
  - contact arrangements which the tenant must follow if he/she is unable to adhere to the agreement
  - summary copy of the arrears policy

### **3.0 LEGAL ACTION**

- 3.1 The Scottish Secure Tenancy Agreement allows the Company to take legal action against tenants in arrears under certain circumstances (these are described in more detail below). The Company will take legal action where:
- a tenant fails to co-operate in reducing the arrears, or
  - the repayment arrangement is repeatedly broken
- 3.2 Legal action is a serious matter which could result in a tenant losing his/her home and, as such, it will not be entered into lightly. The converse of this is that, when legal action is started, it will be on the basis that the Company is prepared to carry it out. Tenants

will therefore be made aware that the sanction of legal action is not viewed as an empty threat. Pursuing court action will only follow once every reasonable effort has been made to meet the tenant and assist them to address their arrears.

### **The Legal Remedies Available**

3.3 Registered Social Landlords may take one of the following:

- Seek to recover the property only
- Seek to recover the arrear only (with the tenant remaining in the property)
- Seek to recover both the property and the arrear – this is known as a conjoined action

3.4 The Company's policy is to pursue a conjoined action. Moreover, where the Sheriff Court rules in favour of the Company, an award of legal expenses against the tenant will also be sought by the Company's solicitor.

3.5 A glossary of some of the more common legal terms is located at Appendix 2 and is included in new tenant's sign up packs.

## **4.0 THE PROCEDURE FOR TAKING LEGAL ACTION**

4.1 The procedure for serving a Notice of Proceedings is governed by section 14(2) of the Housing (Scotland) Act 2001 and applies to all of the Company's tenants irrespective of whether a new Scottish Secure Tenancy Agreement has been signed. The Notice must state the grounds for recovery and the date after which the Company can raise recovery proceedings. The relevant ground for recovery for rent arrears is Ground 1, Schedule 2, Part 1, which states:

*"Rent lawfully due from the tenant has not been paid, or any other obligation of the tenancy has been broken."*

### **4.3 Pre-Action Requirements**

4.4 The Housing (Scotland) Act 2010 introduced pre-action requirements that landlords must satisfy in all rent arrears cases before serving a notice on a tenant. Under sections 14 and 14A of the Housing (Scotland) Act 2001 Act as amended by section 155 of the 2010 Act and changes to repossession orders under section 16 of the 2001 Act as amended by section 153 of the 2010 Act Registered Social Landlords (RSLs) must be able to demonstrate that they have;

1. Given clear information about the tenancy agreement and the unpaid rent or other financial obligations;
2. Made reasonable efforts to give help and advice on eligibility for Universal Credit or Housing Benefit and other types of financial assistance;
3. Given information about sources of assistance for debt advice;
4. Made reasonable efforts to agree with the tenant a reasonable plan for money due and future payment of the rental charge;
5. Considered the likely result of any application for Universal Credit or Housing Benefit that has not yet been decided;
6. Considered other steps the tenant is taking which are likely to result in payment within a reasonable time;

7. Considered whether the tenant is complying with the terms of an agreed plan for the money due and continuing to pay the rental charge; and
8. Encouraged the tenant to contact their local authority to advise of their housing situation.

### **The Right of Non-Tenants to be Heard in Court**

4.2 From 30 September 2002 all “qualifying occupiers” have the right to be heard in Court – “qualifying occupiers” are all those living in the household who are aged 16 or over, including members of the tenant’s family and their children. This means that Notices must be served on each person living in the household who is aged 16 or over. If this is not done, then the action is likely to fail.

4.3 There may, of course, be situations where the Company is unaware that someone has moved into the household and, therefore, the Notice is not served to that person. What is likely to happen in such circumstances has yet to be tested in Court. The SFHA highlights the contractual duty upon tenants to keep the landlord informed of all those living in the property but, nevertheless, failure to include qualifying occupiers in legal action could invalidate the action. Until some case law has been established, the Company’s approach will be to take all reasonable steps to keep up to date. For example:

- Emphasise the requirement to keep the Company informed of who is living in the property at the sign-up.,
- Remind tenants through inserts in newsletters and other publicity that they must inform the Company if the household composition changes (this may also be advised in a newsletter from time to time).
- Check household composition when carrying out arrears interviews, particularly when completing the income and expenditure pro forma.
- Pay particular attention to children who are 15 years old at the time the Notice is served as the Company is required to serve this individual with a Notice when they become 16.

### **The Early Stage**

4.4 When rent arrears occurs (or an arrangement is broken) the Company will send the first standard escalation letter to the tenant within five working days. The Company has developed a suite of standard letters (Appendix 3) that should be used, additional information can be added to the standard letter to personalise it for the tenant’s particular circumstances as required. If there is no contact within another five working days, the Housing Officer, once he/she is reasonably satisfied that the tenant is not away from home, should issue the second standard arrears letter requesting the tenant to make contact within five days. .

4.5 If the tenant still does not respond, then a third letter should be sent with an appointment for interview in either the tenant’s home or the Company’s office. At this time, the tenant should also be advised that failure to attend the appointment (or contact the Company to arrange a more suitable time) will result in the first stage of legal action being taken – the summary arrears policy should be included at this stage.

4.5 The purpose of the above is to help ensure that an arrangement for repaying the arrears are made before the next monthly charge is raised. If no contact is made, however, a second missed payment may occur. The Flow Chart at Appendix 4 should be used as a check that letters and/or visits are done within the required timescales.

4.6

The early-stage standard letters, home visits and office appointment ensure that Pre-Action Requirements (PARs) are met. The letters advise the tenant what help is available to them particularly in relation to claiming benefits and getting help with debt as well as the consequences of continuing to not pay rent. Payment of outstanding rent or an arrangement to pay stops the escalation process at the pre-court stage.

- 4.7 By the time the tenant has missed an appointment, two payments will have been missed. At this point, the Company should prepare the Notice of Proceedings for Recovery of Possession (NOPRP) which should be served on the fifth day after the third payment has been missed. A letter should be sent to the tenant outlining this as soon as the appointment has been missed and attempts will continue to be made to contact the tenant up to the time that the NOPRP is due to be served.

#### **Authorising Legal Action**

- 4.9 The Housing Officer (or person deputising in his/her absence) should make a recommendation to the Customer Service Manager where it is felt that a Notice should be served. The Housing Officer should prepare a short report outlining the reasons for legal action beginning and detailing all attempts at contact. The household composition (and the day on which this was last verified) should also be noted. (Where the Customer Service Manager is absent for a week or more, another member of staff should double-check the reasons for serving the Notice and, assuming that both are in agreement, the Notice should be served.
- 4.10 Any action beyond serving of the first Notice must be endorsed by the Business Manager up to, and including, the point that a Decree is obtained and eviction agreed or the action is suspended.
- 4.11 In all cases where the Company decides to pursue legal action the Housing Officer will, subject to Data Protection considerations and in compliance with Section 11 of the Homelessness etc. (Scotland) Act 2003, contact East Lothian Council's Social Work Services and Homeless section on the tenant's behalf.

#### **Decree Granted**

- 4.12 When a Decree is granted, there is often a delay between obtaining the Decree and deciding whether to evict the tenant. A decree remains enforceable for up to 6 months after it is granted by the Sheriff Court. . The tenancy is not ended until the eviction has been carried out.
- 4.13 **Violent Profits** If a tenant pays money to the Company after the eviction is carried out and the tenancy has been ended this is treated as violent profits and not rent. Where the issue of violent profits arises, the Housing Officer should liaise with the Finance Agent or Business Manager to ensure that a separate account exists for the money to be deposited. The Housing Officer should also check with the solicitor that it is acceptable to treat any money paid as violent profits.
- 4.14 Any money paid during this period will be recorded separately in the tenant's Memo account of SDM and their diary.

### **5.0 OTHER TYPES OF RENT ARREARS**

- 5.1 This section deals with (i) technical arrears and (ii) former tenant arrears. Because of the nature of these amounts, conventional management (as outlined above) is unlikely to be appropriate and the following procedures should be used.



### **Technical Arrears**

- 5.2 The vast majority of technical arrears relate to amounts of rent that are due to be paid by Universal Credit or Housing Benefit on the tenant's behalf, but are outstanding due to processing or timing delays.. Where the Housing Officer is satisfied that the amount owed is going to be cleared once benefit due is paid, then the Company's approach will involve contacting the DWP or the Council with a view to securing payment as soon as possible. This is preferable to trying to get the tenant to make payments that they are unlikely to be able to afford.
- 5.3 The critical point here, however, is that the Housing Officer must be satisfied that the Universal Credit or Housing Benefit will, indeed, be paid. The steps to be taken will depend on individual circumstances, but are likely to involve the following:
- confirmation of the tenant's entitlement to the primary benefit claimed eg Universal Credit or Income-Based Job Seeker's Allowance
  - details of any non-dependants living in the household and their ages/income levels in order to determine the amount of any non-dependant deductions
  - confirmation that a benefit claim has been made and the date of claim
- 5.4 If an arrear that is thought to be technical is not ultimately covered by a payment of benefit, then it will become a non-technical arrear and will be pursued in the usual manner.

### **Former Tenant Arrears**

- 5.5 The method of pursuing former tenant arrears is dependent on a number of factors. For example:
- the amount of the arrears
  - whether the Company has a forwarding address
- 5.6 Where the level of the arrear exceeds 3 debit periods, the Company will seek recovery, even where there is no forwarding address. This could include, for example, using a tracing agency. Once the forwarding address has been obtained, the following may be used:
- sending reminder letters
  - conducting home visits
  - Sheriff Officers
  - Debt collection agency
  - other legal action, where this is economical
- 5.7 There can be considerable practical problems in pursuing former tenant rent arrears and this has tended to lead to low collection rates across the sector. It may therefore not make administrative sense to continue to pursue amounts where (i) the balance outstanding is low or (ii) despite attempts to find out the forwarding address, this is still not known. An annual report will therefore be prepared by the Customer Service Manager for the Board recommending amounts that are to be written off – these amounts should also be discussed with the Business Manager prior to the report being presented to the Board. In addition there may be ad hoc write off requests for current tenant arrears presented to the Board where the current tenant has been sequestered.

## **6.0 OTHER DEBTS**

- 6.1 **Rechargeable Costs are covered by our Rechargeable Costs policy.** This states:

- 6.1.1 For all rechargeable costs, if the invoice is not settled, the first reminder letter to the tenant for the repair bill will be issued 14 days after the invoice.
- 6.1.2 Failure to pay the outstanding invoice in full will result in a second and final reminder being sent informing the tenant that the issue will be referred to the Board of Homes for Life Housing Partnership, with a recommendation to proceed with legal action for recovery of the debt. The second and final reminder will be sent to the tenant 28 days following the issue of original invoice.
- 6.1.3 Failure to contact Homes for Life Housing Partnership on receipt of the second and final reminder will result in normal debt recovery procedures being instigated. The tenant will be given notice that the Board intend to proceed with legal action for recovery of the debt.
- 6.1.4 The cost effectiveness of actively pursuing relatively small repair accounts will be considered at all times. The Company will therefore write-off repair accounts at the financial year end where a reasonable attempt to collect has been made. This will not prevent the money being collected at a later date.

## **6.2 Unpaid factoring fees**

- 6.2.1 Core factoring services are recharged to homeowners at cost with a small administration fee charged for managing the service
- 6.2.2 Owners are invoiced once a year in May. Any unpaid fees that remain outstanding 28 days after invoice will automatically incur a late payment administration fee of **£15** and receive a 1st Reminder letter. Failure to address the arrear within 14 days of a 2nd reminder letter will result in a 3rd a final letter requiring payment within 7 working days.
- 6.2.3 Where an owner has failed to pay factoring fees after the 3<sup>rd</sup> and final letter has been issued the Company may take legal action to recover the debt.

Additional administration and legal costs associated with Debt Recovery Action will then also be charged to the account.

- 6.2.4 Where the Company obtains a decree for payment and the debt is still not cleared the decree may be enforced by:
  - arresting wages
  - arresting bank account
  - stopping the owner selling their house.

## **7.0 PERFORMANCE MONITORING**

- 7.1 In order to measure the success of this policy and procedure, the Board will monitor performance. This does not mean that individual cases will be considered, rather performance against targets and trends in evidence will be examined.
- 7.2 The Board will agree an annual target for non-technical arrears as part of the business planning process. This will be derived from current levels and peer group benchmarks as published by The Scottish Housing Regulator. The Board will monitor progress quarterly via reports from staff and will include information on:
  - the total amount of rent arrears (technical, non-technical and former tenant)
  - arrears owed as a percentage of the annual rent debit

- trends
- comparisons with other RSLs in the Company's peer group
- the number of tenants in arrears of more than one month and more than three months
- the number of Notices currently effective
- the number of court cases pending

7.3 An annual statement on arrears will be made in the Annual Report.

## **8.0 REVIEW**

8.1 This policy will be reviewed every five years, or earlier in line with any changes to legal, regulatory or good practice requirements.

8.2 The Company will be open to feedback from tenants in the form of any complaints or compliments received or feedback obtained through consultation events.